

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI

ROBUST MISSOURI DISPENSARY 3,)	
LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	
WAYNE WALLINGFORD, in his official)	
capacity as the Director of Revenue for)	
the State of Missouri,)	
SERVE:)	Cause No.
Department of Revenue)	
Truman Building, Room 670)	
P.O. Box 311)	
Jefferson City, Missouri 65102)	Division No.
)	
And,)	
)	
ST. LOUIS COUNTY, MISSOURI,)	
SERVE:)	
St. Louis County c/o County Clerk)	
41 South Central, 1st Floor)	
St. Louis, Missouri 63105)	
)	
Defendants.)	

**PETITION FOR DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF**

Plaintiff Robust Missouri Dispensary 3, LLC, for its petition for declaratory judgment and injunctive relief, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Robust Missouri Dispensary 3, LLC is a Missouri limited liability company that operates Missouri dispensary facility license number DIS000055 at 444 Howdershell Road, Florissant, Missouri 63031.

2. Defendant Wayne Wallingford is the Director of Revenue for the State of Missouri and is responsible for the collection of all taxes lawfully enacted by governmental bodies through the State of Missouri. Director Wallingford is sued in his official capacity.

3. Defendant St. Louis County, Missouri, is a charter county organized under the laws of the State of Missouri.

4. Venue is proper in this Court under section 508.060, RSMo.

FACTUAL ALLEGATIONS

5. In 2022, the Missouri Constitution was amended to include Article XIV, Section 2.

6. The purpose of Article XIV, Section 2, of the Missouri Constitution is to make marijuana legal under state and local law for adults twenty-one years of age or older, and to control the commercial production and distribution of marijuana under a system that licenses, regulates, and taxes the businesses involved while protecting public health. The intent is to prevent arrest and penalty for personal possession and cultivation of limited amounts of marijuana by adults twenty-one years of age or older; remove the commercial production and distribution of marijuana from the illicit market; prevent revenue generated from commerce in marijuana from going to criminal enterprises; prevent the distribution of marijuana to persons under twenty-one years of age; prevent the diversion of marijuana to illicit markets; protect public health by ensuring the safety of marijuana and products containing marijuana; and ensure the security of marijuana facilities.

7. Article XIV, Section 2.6(1), of the Missouri Constitution provides that a tax shall be levied upon the retail sale of non-medical marijuana sold to consumers at marijuana facilities licensed pursuant Article XIV, Section 2, of the Missouri Constitution within the state. The tax shall be at a rate of six percent of the retail price. The tax shall be collected by each licensed retail marijuana facility and paid to the Department of Revenue.

8. Article XIV, Section 2.6(5), of the Missouri Constitution provides that the governing body of any local government is authorized to impose, by ordinance or order, an additional sales tax in an amount not to exceed three percent on all tangible personal property retail sales of adult use marijuana sold in such political subdivision.

9. Article XIV, Section 2.6(6), of the Missouri Constitution provides that, except as authorized in Article XIV of the Missouri Constitution, no additional taxes shall be imposed on the sale of marijuana.

10. Article XIV, Section 2.2(12), of the Missouri Constitution provides that “Local government” means, “in the case of an incorporated area, a village, town, or city and, in the case of an unincorporated area, a county.”

11. Article XIV, Section 2.5(3), of the Missouri Constitution provides that the only local government ordinances and regulations that are binding on a marijuana facility are those of the local government where the marijuana facility is located.

12. In February 2023, the Department of Revenue issued a first communication on adult use marijuana taxation. *See Exhibit A.*

13. In the first communication of February 2023, the Department of Revenue stated in part: “The Department understands there may be some confusion regarding the additional tax on recreational marijuana, routinely referenced as adult use tax.” *See Exhibit A.*

14. In the first communication of February 2023, the Department of Revenue stated in part: “After further review, the Department is clarifying that based on the constitutional language, a city and a county cannot ‘stack’ the additional up to 3% local tax on recreational marijuana sales. A city and a county may both present ballot language for vote, an amount not to exceed 3% local tax on recreational marijuana. However, the tax collected from a customer is limited to the percentage passed and is based on the location of the recreational marijuana business (facility) and depends on if that facility is in an incorporated or unincorporated area.” *See Exhibit A.*

15. In the first communication of February 2023, the Department of Revenue stated in part: “If a facility is in an incorporated area, only the city, town or village can impose any (up to 3%) adult use tax. The county can only impose any adult use tax (up to 3%) on facilities located in an unincorporated area. Therefore, if a city imposes 3% and the county imposes 2%, then businesses in the city will charge only 3% on each sale (not the combined) and the distribution is to the city

only. Businesses outside an incorporated area in that county will charge 2% but the distribution is to the county only.” *See* Exhibit A.

16. In February 2023, the Department of Revenue issued a second communication on adult use marijuana taxation. *See* Exhibit B.

17. In the second communication of February 2023, the Department of Revenue stated in part: “This letter updates prior Department communications on adult use marijuana taxation. On February 1, 2023, the Taxation Division sent a letter to the Missouri Municipal League and the Missouri Association of Counties informing them that ‘a city and a county cannot ‘stack’ the additional up to 3% local tax on recreational marijuana sales.’ Now, the Department rescinds that guidance after engaging in public and private stakeholder feedback. Going forward, the Department will not advise municipalities or counties regarding the possibility of stacking based on the language in Article XIV of the Missouri Constitution. Article XIV is ambiguous and this letter outlines the two interpretations of the stacking discussion.” *See* Exhibit B.

18. At the election of April 4, 2023, the City of Florissant submitted its “Prop M” to its voters, which asked: “Shall the City of Florissant impose a sales tax of three percent (3%) on all retail sales of adult-use marijuana sold in City of Florissant, Missouri?”

19. The voters passed Florissant’s “Prop M.”

20. At the election of April 4, 2023, Defendant St. Louis County submitted its “Prop M” to its voters, which asked: “Shall St. Louis County impose an

additional sales tax of three percent (3%) on all tangible property retail sales of adult use marijuana sold in St. Louis County, Missouri?”

21. The voters passed St. Louis County’s “Prop M.”

22. Florissant and St. Louis County each asked the Department to impose and collect the Local Government Tax on the retail sale of adult use marijuana sold in their respective jurisdictions.

23. The Department of Revenue sent a “Sales Tax Rate Change Notification” dated October 2023 to Plaintiff. *See* Exhibit C.

24. The “Sales Tax Rate Change Notification” dated October 2023 stated in part: “The county of St Louis County has imposed a 3 percent county adult use marijuana sales tax. The city of Florissant has imposed a 3 percent city adult use marijuana sales tax.” *See* Exhibit C.

25. The “Sales Tax Rate Change Notification” dated October 2023 stated in part: “Your business must collect and remit tax at the new sales tax rate.” *See* Exhibit C.

26. The “Sales Tax Rate Change Notification” dated October 2023 stated a tax rate of 14.988%, which included a 3 percent county adult use marijuana sales tax for St. Louis County and a 3 percent city adult use marijuana sales tax for Florissant. *See* Exhibit C.

COUNT FOR DECLARATORY JUDGMENT

27. Plaintiff incorporates and realleges paragraphs 1–26 as if set forth in full herein.

28. The Declaratory Judgment Act and Rule 87 authorize the Court to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

29. Any person whose rights, status or other legal relations are affected by a statute or ordinance “may have determined any question of construction or validity arising under” the enactment “and obtain a declaration of rights, status or other legal relations thereunder.” § 527.020, RSMo.

30. There is a justiciable controversy between Plaintiff, the Director (Department) of Revenue, and St. Louis County regarding whether Article XIV of the Missouri Constitution permits a county to enact an ordinance imposing a three percent sales tax on retail sales of adult use marijuana and ask the Director to collect that three percent sales tax on retail sales of adult use marijuana occurring at a dispensary located within the boundaries of an incorporated village, town, or city.

31. Plaintiff has a legally protectable interest in determining whether St. Louis County may ask the Director of Revenue to collect its three percent sales tax on the retail sale of adult use marijuana occurring at Plaintiff’s dispensary located within Florissant’s boundaries.

32. This issue is ripe for review because Plaintiff received a letter from the Director advising that both Florissant and St. Louis County had each purported to impose a three percent local government tax on adult use marijuana sales at Plaintiff’s Florissant dispensary beginning October 1, 2023. *See Exhibit C.* The

Director told Plaintiff it “must collect and remit tax at the new sales tax rate,” which included a 3 percent county adult use marijuana sales tax for St. Louis County and a 3 percent city adult use marijuana sales tax for Florissant. *See* Exhibit C.

33. A declaratory judgment as requested by Plaintiff would have a conclusive effect and lay to rest the controversy between the parties as to whether Article XIV of the Missouri Constitution permits a county to impose and ask the Director to collect a local government tax on sales of adult use marijuana at a Missouri marijuana dispensary facility located within the boundaries of an incorporated village, town, or city.

34. In addition to this declaration, Plaintiff seeks an injunction enjoining the Director from collecting any sales tax enacted by St. Louis County pursuant to Article XIV of the Missouri Constitution from sales of adult use marijuana at Plaintiff's dispensary facility located within the boundaries of Florissant.

35. Without injunctive relief, Plaintiff will suffer irreparable harm by being required to collect sales tax from its customers above what is authorized by Article XIV of the Missouri Constitution, thereby permanently damaging those customer relationships.

36. Plaintiff does not have an adequate remedy at law because, absent a declaration from this Court and injunctive relief, the Director will continue to collect these taxes above what is permitted by the Missouri Constitution, and

Plaintiff will be forced to collect this tax from its customers, resulting in loss of customer relationships.

WHEREFORE, Plaintiff requests the following relief:

A. A declaration that Article XIV of the Missouri Constitution does not authorize a county to impose and ask the Director to collect a local government tax on retail sales of adult use marijuana occurring at a Missouri marijuana dispensary facility located within the boundaries of an incorporated village, town, or city.

B. A declaration that Article XIV of the Missouri Constitution only authorizes a county to impose and ask the Director to collect a local government tax on retail sales of adult use marijuana occurring at a Missouri marijuana dispensary facility located in an unincorporated area of that county.

C. An injunction enjoining the Director from collecting any sales tax enacted by St. Louis County pursuant to Article XIV of the Missouri Constitution from sales of adult use marijuana at Plaintiff's dispensary facility located within the boundaries of Florissant.

By: s/ Paul L. Brusati
 Eric Walter, #47297
 Jeffery T. McPherson, #42825
 Paul L. Brusati, #67975
 ARMSTRONG TEASDALE LLP
 7700 Forsyth Blvd, Suite 1800
 St. Louis, MO 63015
 ewalter@atllp.com
 jmcpherson@atllp.com
 pbrusati@atllp.com

Attorneys for Plaintiff